

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: May 2, 2005

To: The Commission
(Meeting of May 5, 2005)

From: Delaney L. Hunter, Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **SB 204 (Bowen)** Public Utilities Commission: State Energy
Resources Conservation and Development Commission:
memberships
As Amended April 18, 2005

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: Oppose

SUMMARY: This bill sets up strict conflict of interest rules for CPUC and CEC Commissioners, including limiting the pre-Commission and post-Commission employment.

DIGEST: Existing law prohibits members of the California Public Utilities Commission (CPUC) from holding an official relationship with, or having a financial interest in, any person or corporation subject to CPUC regulation. Existing law prohibits members of the CPUC from holding an official relation to, or having a financial interest in, a person or corporation subject to regulation by the CPUC. Existing law provides that if a member of the CPUC acquires a financial interest in a corporation or person subject to regulation by the CPUC other than voluntarily, his or her office becomes vacant unless within a reasonable time he or she divests the financial interest. Existing law requires the CPUC, by February 28, 1998, to adopt an updated Conflict of Interest Code and Statement of Incompatible Activities.

This bill would additionally preclude membership on the CPUC by any person who, during the 2 years preceding appointment, received a substantial portion of his or her income from any person or corporation subject to CPUC regulation. The bill would prohibit CPUC members from being employed by a person or corporation subject to CPUC regulation, while a member of the CPUC or within 2 years thereafter. The bill would prohibit CPUC members from holding any other public office or position. The bill would require CPUC members to comply with provisions governing conflicts of interest of officers and employees appointed within the state civil service. The bill would prohibit members and employees of the CPUC from participating personally and substantially in

matters in which the person knows that the person, his or her spouse or minor child, partner, any organization he or she serves or has served as an officer, director, trustee, partner, or employee has a direct or indirect financial interest or has had such an interest during the two years prior to his or her appointment as a member of the CPUC. The bill would prohibit any person who is a partner, employer, or employee of a member or employee of the CPUC from acting as an attorney, agent, or employee for any person other than the state in connection with any matter in which the CPUC is a party or has a direct and substantial interest.

The bill would make a violation of these provisions a felony, subject to fine or imprisonment. By creating a new crime, the bill would impose a state-mandated local program.

This bill would provide that if a member of the CPUC acquires or maintains a financial interest in a person or corporation and knows or should know the person or corporation is subject to regulation by the CPUC, his or her office would immediately become vacant. The bill would provide that if a member of the CPUC involuntarily acquires or maintains a financial interest in a person or corporation subject to regulation by the CPUC, his or her office would become vacant unless within a reasonable time he or she divests the financial interest. The bill would require the CPUC, by June 1, 2006, to adopt an updated Conflict of Interest Code and Statement of Incompatible Activities.

The existing Warren-Alquist State Energy Resources Conservation and Development Act establishes the State Energy Resources Conservation and Development Commission (Energy Commission), with various duties and responsibilities with respect to energy policy and planning. Existing law prohibits any person from being a member of the Energy Commission who, during the 2 years prior to appointment, received any substantial portion of his income directly or indirectly from any electric utility, as defined, or who engages in the sale or manufacture of any major component of any facility, as defined.

Existing law prohibits a member of the Energy Commission from being employed by any electric utility, applicant, as defined, or from being employed within 2 years after he ceases to be a member of the Energy Commission, by any person engaged in the sale or manufacture of any major component of any facility.

This bill would prohibit any person from being a member of the Energy Commission who, during the 2 years prior to appointment, received any substantial portion of his or her income directly or indirectly from any person or corporation subject to regulation by the Energy Commission, or who engages in the sale or manufacture of any major component of any facility. The bill would prohibit a member of the Energy Commission from being employed by any person or corporation subject to regulation by the Energy Commission, including an applicant, or within 2 years after he or she ceases to be a member of the Energy Commission, by any person engaged in the sale or manufacture of any major component of any facility.

DIVISION ANALYSIS (Legal):

The provisions of SB 204 that apply to this Commission try to accomplish three main things: 1) preventing people who have been substantially involved with regulated entities within the past two years from being appointed; 2) prohibiting Commissioners or Commission employees from engaging in certain activities while they are working at the Commission; and 3) prohibiting Commissioners from working for regulated entities for two years after they stop being Commissioners.

SB 204 can not lawfully be interpreted to provide for the dismissal of current Commissioners who may have worked with regulated entities within the two years prior to their appointment, because Article 1, Section 8, of the California Constitution prohibits, among other things "ex post facto laws". Basically, the Legislature can't punish people for actions that were lawful when they were taken, and that have already been taken, by now making those formerly innocent actions into a crime. Since SB 204 makes violations a felony, and since the current Commissioners have taken whatever actions they took during the two years before they were appointed, the application of this bill in a punitive fashion to current Commissioners would seem to create a classic ex post facto situation. Further, SB 204 expresses no explicit retroactive intent. Unless legislation clearly reflects an intent that it apply retroactively, it is generally interpreted as applying only prospectively.

The provisions of SB 204 that would prospectively limit the actions of current Commissioners and Commission employees from seeking employment with utilities the Commission regulates for two years do not appear to be subject to the same ex post facto scenario. Hence, SB 204 could be interpreted to limit the ability of current Commissioners to seek employment after their terms are completed.

LEGISLATIVE HISTORY:

AB 2006 (Nunez) of the 2003-2004 session contained language identical to this bill relative to CPUC commissioners. AB 2006 was approved by the Legislature, but was vetoed by the Governor.

STATUS:

SB 204 passed out of the Senate Energy, April 14, 2005 by a vote of 6-3. SB 204 will be heard in Senate Appropriations Committee on May 2, 2005.

SUPPORT/OPPOSITION (as of April 5, 2005)

Support:

California Alliance for Consumer Protection
Utility Consumers' Action Network

Opposition:

California Chamber of Commerce

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Date: May 2, 2005

BILL NUMBER: SB 204 AMENDED
BILL TEXT

AMENDED IN SENATE APRIL 18, 2005

INTRODUCED BY Senator Bowen

FEBRUARY 10, 2005

An act to ~~add Section 303.5 to~~ amend
Section 25205 of the Public Resources Code, and to amend Section 303
of, and to add Section 303.5 to, the Public Utilities Code,
relating to ~~the Public Utilities Commission~~
commission memberships .

LEGISLATIVE COUNSEL'S DIGEST

SB 204, as amended, Bowen. Public Utilities Commission:
State Energy Resources Conservation and Development Commission:
~~commission membership~~ memberships .

Existing law prohibits members of the California Public
Utilities Commission (CPUC) from holding an official
relationship with, or having a financial interest in, any person or
corporation subject to ~~commission~~ CPUC
regulation. Existing law prohibits members of the CPUC from
holding an official relation to, or having a financial interest in, a
person or corporation subject to regulation by the CPUC. Existing
law provides that if a member of the CPUC acquires a financial
interest in a corporation or person subject to regulation
by the CPUC other than voluntarily, his or her office becomes vacant
unless within a reasonable time he or she divests the financial
interest. Existing law requires the CPUC, by February 28, 1998, to
adopt an updated Conflict of Interest Code and Statement of
Incompatible Activities.

This bill would additionally preclude membership on the
~~commission~~ CPUC by any person who, during the 2
years preceding appointment, received a substantial portion of his or
her income from any person or corporation subject to
~~commission~~ CPUC regulation. The bill would
prohibit ~~commission~~ CPUC members from
being employed by a person or corporation subject to
~~commission~~ CPUC regulation, while a member of
the ~~commission~~ CPUC or within 2 years
thereafter. The bill would prohibit ~~commission~~

CPUC members from holding any other public office or
position. The bill would require ~~commission~~
CPUC members to comply with provisions governing conflicts of
interest of officers and employees appointed within the state civil
service. The bill would prohibit members and employees of the
~~commission~~ CPUC from participating
personally and substantially in matters in which the person knows
that the person, his or her spouse or minor child, partner, any
organization he or she serves or has served as an officer, director,
trustee, partner, or employee has a direct or indirect financial
interest or has had such an interest during the two years prior to
his or her appointment as a member of the ~~commission~~

CPUC . The bill would prohibit any person who is

a partner, employer, or employee of a member or employee of the ~~commission~~ CPUC from acting as an attorney, agent, or employee for any person other than the state in connection with any matter in which the ~~commission~~

CPUC is a party or has a direct and substantial interest.

The bill would make a violation of these provisions a felony, subject to fine or imprisonment. By creating a new crime, the bill would impose a state-mandated local program.

This bill would provide that if a member of the CPUC acquires or maintains a financial interest in a person or corporation and knows or should know the person or corporation is subject to regulation by the CPUC, his or her office would immediately become vacant. The bill would provide that if a member of the CPUC involuntarily acquires or maintains a financial interest in a person or corporation subject to regulation by the CPUC, his or her office would become vacant unless within a reasonable time he or she divests the financial interest. The bill would require the CPUC, by June 1, 2006, to adopt an updated Conflict of Interest Code and Statement of Incompatible Activities.

The existing Warren-Alquist State Energy Resources Conservation and Development Act establishes the State Energy Resources Conservation and Development Commission (Energy Commission), with various duties and responsibilities with respect to energy policy and planning. Existing law prohibits any person from being a member of the Energy Commission who, during the 2 years prior to appointment, received any substantial portion of his income directly or indirectly from any electric utility, as defined, or who engages in the sale or manufacture of any major component of any facility, as defined. Existing law prohibits a member of the Energy Commission from being employed by any electric utility, applicant, as defined, or from being employed within 2 years after he ceases to be a member of the Energy Commission, by any person engaged in the sale or manufacture of any major component of any facility.

This bill would prohibit any person from being a member of the Energy Commission who, during the 2 years prior to appointment, received any substantial portion of his or her income directly or indirectly from any person or corporation subject to regulation by the Energy Commission, or who engages in the sale or manufacture of any major component of any facility. The bill would prohibit a member of the Energy Commission from being employed by any person or corporation subject to regulation by the Energy Commission, including an applicant, or within 2 years after he or she ceases to be a member of the Energy Commission, by any person engaged in the sale or manufacture of any major component of any facility.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~
yes . State-mandated local program: ~~no~~
yes .

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. *Section 25205 of the Public Resources Code is amended to read:*

25205. (a) No person shall be a member of the commission who, during the two years prior to appointment ~~on~~ to the commission, received any substantial portion of his or her income directly or indirectly from any ~~electric utility~~ person or corporation subject to regulation by the commission, or who engages in sale or manufacture of any major component of any facility. No member of the commission shall be employed by any ~~electric utility~~, person or corporation subject to regulation by the commission, including an applicant, or, within two years after he ceases to be a member of the commission, by any person who engages in the sale or manufacture of any major component of any facility.

(b) Except as provided in Section 25202, the members of the commission shall not hold any other elected or appointed public office or position.

(c) The members of the commission and all employees of the commission shall comply with all applicable provisions of Section ~~19251~~ 19990 of the Government Code.

(d) No person who is a member or employee of the commission shall participate personally and substantially as a member or employee of the commission, ~~through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, hearing, application, request for a ruling, or other determination, contract, claim, controversy, study, plan, or other particular~~ in any matter in which, to his or her knowledge, he or she, his or her spouse, minor child, or partner, or any organization, except a governmental agency or educational or research institution qualifying as a nonprofit organization under state or federal income tax law, in which he or she is serving, or has served as an officer, director, trustee, partner, or employee while serving as a member or employee of the commission or within two years prior to his or her appointment as a member of the commission, has a direct or indirect financial interest.

(e) No person who is a partner, employer, or employee of a member or employee of the commission shall act as an attorney, agent, or employee for any person other than the state in connection with any ~~judicial or other proceeding, hearing, application, request for a ruling, or other determination, contract, claim, controversy, study, plan, or other particular~~ matter in which the commission is a party or has a direct and substantial interest.

(f) The provisions of this section shall not apply if the Attorney General finds that the interest of the member or employee of the commission is not so substantial as to be deemed likely to affect the integrity of the services which the state may expect from such member or employee.

(g) Any person who violates any provision of this section is guilty of a felony and shall be subject to a fine of not more than ten thousand dollars (\$10,000) or imprisonment in the state prison, or both.

~~—(h) The amendment of subdivision (d) of this section enacted by the 1975-76 Regular Session of the Legislature does not constitute a change in, but is declaratory of, the existing law.~~

SEC. 2 *Section 303 of the Public Utilities Code is amended to read:*

303. (a) A public utilities commissioner may not hold an official relation to nor have a financial interest in a person or corporation

subject to regulation by the commission. *If any commissioner acquires or maintains a financial interest in a person or corporation that the commissioner knows or should know is subject to regulation by the commission, his or her office shall immediately become vacant.*

If any commissioner involuntarily acquires or maintains a financial interest in a ~~corporation or~~ person or corporation subject to regulation by the commission ~~other than voluntarily~~, his or her office shall become vacant unless within a reasonable time he or she divests himself or herself of the interest.

(b) The commission shall adopt an updated Conflict of Interest Code and Statement of Incompatible Activities, by ~~February 28, 1998~~ *June 1, 2006*, in a manner consistent with applicable law.

~~SECTION 1.~~

SEC. 3. Section 303.5 is added to the Public Utilities Code, to read:

303.5. (a) No person shall be a member of the commission who, during the two years prior to appointment to the commission, received any substantial portion of his or her income directly or indirectly from any person or corporation subject to regulation by the commission. No member of the commission shall be employed by any person or corporation subject to regulation by the commission during the term he or she is a member of the commission, or within two years after he or she ceases to be a member of the commission.

(b) The members of the commission shall not hold any other elected or appointed public office or position.

(c) The members of the commission and all employees of the commission shall comply with all applicable provisions of Section 19990 of the Government Code.

(d) No person who is a member or employee of the commission shall participate personally and substantially as a member or employee of the commission, in any matter in which, to his or her knowledge, he or she, his or her spouse, minor child, or partner, or any organization in which he or she is serving, or has served as officer, director, trustee, partner, or employee while serving as a member or employee of the commission or within two years prior to her or his appointment as a member of the commission, has a direct or indirect financial interest.

(e) No person who is a partner, employer, or employee of a member or employee of the commission shall act as an attorney, agent, or employee for any person other than the state in connection with any matter in which the commission is a party or has a direct and substantial interest.

(f) *Any person who violates any provision of this section is guilty of a felony and shall be subject to a fine of not more than ten thousand dollars (\$10,000) or imprisonment in the state prison, or both.*

SEC. 4. *No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.*

